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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,775	06/30/2003	John C. Hill	FLORA.1300	1915
77037	7590	10/17/2008	EXAMINER	
International Flora Technologies, Ltd. C/O Intellecate LLC P.O. Box 52050 Minneapolis, MN 52050				GHALI, ISIS A D
ART UNIT		PAPER NUMBER		
1611				
			MAIL DATE	DELIVERY MODE
			10/17/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/611,775	HILL, JOHN C.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Isis A. Ghali	1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 August 2008.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 35-40 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 35-40 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/26/2008</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

The receipt is acknowledged of applicants' request for RCE and amendment, both filed 8/025/2008; and IDSs filed 09/29/2008.

Claims 1-34 have been canceled.

Claims 35-40 are pending and included in the prosecution.

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/05/2008 has been entered.

### ***Priority - 37 C.F.R. § 1.78(a)(3)***

2. Petition to claim priority pursuant to 37 C.F.R. § 1.78(a)(3) is waiting for decision. Applicant will be notified in due course.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2471775 ('775) combined with Us 2004/0028641 ('641).

FR '775 teaches cosmetic composition comprising mixture of jojoba oil and sunflower oil, and from 20-40% unsaponifiable oils fractions (page 4, 3<sup>rd</sup> paragraph). The unsaponifiable fraction includes residual part of saponifiable components and unsaponifiable fraction, with the unsaponifiable ingredients is greater than 40% (paragraph bridging pages 4 and 5). The cosmetic composition can be in the form of gel

(last paragraph of page 5). Examples 3-5 and 7 showed composition comprising gelling agent Caropol 940, which is an acidic gelling agent.

Although FR '775 teaches composition comprising oil and unsaponifiables obtained from vegetable oils, however, the reference does not teach unsaponifiable is product of hydrolysis of jojoba oil.

US '641 teaches cosmetic composition comprising hydrolyzed jojoba ester (abstract).The cosmetic compositions comprising a hydrolyzed jojoba ester showed increased thermal stability without sacrificing any aesthetic properties or product breakage (paragraph 0006). The hydrolyzed jojoba ester used by the reference is the trade name Floraester (paragraph 0013), which is used by applicants and expected to have polar hydrophilic salt and non-polar unsaponifiable, and expected to comprise more than 10% long chain material prior to hydrolysis. Hydrolyzed jojoba esters are produced using potassium hydroxide (paragraph 0012), and therefore they are alkaline and expected to be capable to neutralize acidic gelling agent.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide cosmetic composition comprising unsaponifiable and another oil as disclosed by FR '775, and replace the unsaponifiable with that produced by hydrolysis of jojoba oil as disclosed by US '641 because US '641 disclosed that hydrolyzed jojoba ester showed increased thermal stability of cosmetic composition without sacrificing any aesthetic properties or product breakage, with reasonable expectation of having cosmetic composition comprising oil and unsaponifiable jojoba oil wherein the composition is stable at storage and capable to neutralize any acidic

component of the composition since the jojoba is hydrolyzed with hydroxide containing compounds.

***Response to Arguments***

6. Applicant's arguments with respect to claims 35-40 have been considered but are moot in view of the new ground(s) of rejection.

***Correspondence***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis A. Ghali whose telephone number is (571) 272-0595. The examiner can normally be reached on Monday-Thursday, 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Art Unit: 1611

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Isis A Ghali/  
Primary Examiner, Art Unit 1611

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